

## Message Text

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FOLLOWING REPEAT OECD PARIS 33986 ACTION SECSTATE 31 DEC 75  
QUOTE

LIMITED OFFICIAL USE OECD PARIS 33986

PASS STR POMERANZ

E.O. 11652: N/A

TAGS; ETRD, OECD

SUBJ: DRAFT REPORT ON GOVERNMENT PURCHASING

REF: TFD/TD/897

1.HHE REFERENCED DOCUMENT CONTAINS THE DRAFT REPORT  
ON GOVERNMENT PURCHASING TO BE SUBMITTED BY THE TRADE  
COMMITTEE WORKING PARTY (TCWP) TO THE TRADE COMMITTEE.  
THE TCWP WILL MEET ON JANUARY 12 AND 13 TO FINALIZE  
THIS REPORT, THE TEXT OF WHICH FOLLOWS:

BEGIN TEXT:

GOVERNMENT PURCHASING

DRAFT REPORT BY THE WORKING PARTY TO THE TRADE COMMITTEE

1. AS AGREED AT THE LAST MEETING OF THE TRADE COMMITTEE  
(TC/M(75)3(PROV.)), ITEM 8(A)) THE WORKING PARTY NOW  
SUBMITS A REPORT TO THE COMMITTEE ON THE PROGRESS  
OF ITS WORK. SINCE THE LAST WRITTEN REPORT (TC(74)1)

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SUBMITTED AT THE 39TH MEETING OF THE COMMITTEE IN  
FEBRUARY 1974 (TC/M(74)1,ITEM 5), THE WORKING PARTY  
HAS ACTIVELY PURSUED ITS WORK ON PROBLEMS IN CONNEC-  
TION WITH THE DRAFT INSTRUMENT, THE OBJECT OF WHICH

IS TO ELIMINATE DISCRIMINATION IN GOVERNMENT PURCHAS-  
ING. AS REQUESTED, THE WORKING PARTY HAS ALSO EN-  
DEAVOURED TO ASSEMBLE FACTUAL BTA ON CONTRACTS  
AWARDED BY PURCHASING ENTITIES IN MEMBER COUNTRIES.

(NOTE: THE REFERENCE PAPERS ARE AT PRESENT:

- DRAFT INSTRUMENT TFD/TD/840(1ST REVISION), SUBJECT  
TO AMENDMENTS AGREED OR UNDER CONSIDERATION:TFD/TD/  
77

ANNEX, TFD/TD/893, 894 AND 896; TFD/TD/881;

- FACTUAL ENQUIRY: TFD/TD/.792, 804, 805, SERIES 821  
AND ADD., TFD/TD/847 AND CORR., TFD/TD/866. END NOTE.)

2. HAVING REGARD TO RESULTS TO DATE, AND ALSO  
TO THE MAJOR QUESTIONS STILL AT ISSUE, THE WORKING  
PARTY CONSIDERS IT PARTICULARLY USEFUL THAT THE COM-  
MITTEE SHOULD CONSIDER THE ORIENTATION TO BE GIVEN  
TO ITS WORK. THE COMMITTEE WILL PROBABLY HAVE IN MIND  
THE POSSIBLE RELATIONSHIP WITH THE MULTILATERAL TRADE  
NEGOTIATIONS, WITH THE POSSIBLE IMPLICATIONS WITH RE-  
GARD TO CONTINUATION OF THE WORK, NOTABLE FROM THE  
POINT OF VIEW OF THE TIME HORIZON. THE TIME WOULD  
ALSO APPEAR TO HAVE COME TO REFLECT ON THE PROSPECTS  
OPENED UP BY THESE RATHER LONG STUDIES. IN THE  
OPINION OF CERTAIN DELEGATIONS THE INDICATIONS AS TO  
THE REAL POSSIBILITIES OF ARRIVING AT A SUCCESSFUL  
CONCLUSION ARE NOT AS YET CONVINCING. A NUMBER  
OF OTHER DELEGATIONS FEEL THAT THE RESULTS ACHIEVED  
PROVIDE THE OPPORTUNITY, ON THE BASIS OF OPTIONS TO  
BE FORMULATED, TO MAKE DECISIVE PROGRESS WITHIN THIS  
FRAMEWORK.

3. AS IT STANDS AT PRESENT THE DRAFT INSTRUMENT IS A  
COMPLETE OUTLINE SOLUTION THE TEXT OF WHICH FOR THE  
MOST PART IS ELABORATED. SINCE THE LAST DRAFT WAS  
SUBMITTED TO THE COMMITTEE, THE WORKING PARTY HAS BEEN  
ABLE TO CONSOLIDATE TO A CERTAIN EXTENT THE "PROVISIONS  
OF SUBSTANCE" OF THE DRAFT INSTRUMENT AND IN PARTICULAR  
THE PROVISIONS APPLICABLE BY THE PURCHASING ENTITIES  
TO ENSURE EFFECTIVE COMPLIANCE WITH THE  
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PRINCIPLE OF NON-DISCRIMINATION IN THE PURCHASING PRO-  
CESS. THE WORK HAS ALSO RESULTED IN THE PREPARATION  
OF A TEXT, A LARGE PART OF WHICH IS COMMON GROUND, ON  
THE REGULAR SURVEILLANCE OF THE INSTRUMENT. IT HAS  
ALSO PROGRESSED ON THE QUESTION OF NON-DISCRIMINATION  
AND CERTAIN ASPECTS OF THE FINAL PROVISIONS HAVE  
BEEN TOUCHED UPON. AT THE LAST MEETING OF THE WORKING  
PARTY CERTAIN PROPOSALS WERE MADE TO WHICH THE WORKING  
PARTY HAS NOT YET BEEN ABLE FULLY TO REACT, CONCERNING  
SOME OF THE IMPORTANT QUESTIONS REFERRED TO BELOW.

4. THE MAIN PROBLEMS WHICH THE WORKING PARTY WISHES  
TO SUBMIT TO THE COMMITTEE ARE GROUPED TOGETHER UNDER

FOUR HEADINGS:

I FIELD OF APPLICATION AND EQUILIBRIUM OF THE INSTRUMENT (PARAGRAPH 5 TO 13):

- PURCHASING ENTITIES (PARAGRAPH 6)
- THRESHOLD (PARAGRAPH 8)
- DEROGATIONS AND SAFEGUARD CLAUSE (PARAGRAPH 10)

II SETTLEMENT OF DISPUTES AT INTERNATIONAL LEVEL (PARAGRAPHS 14 TO 19):

- BODIES RESPONSIBLE FOR THE SETTLEMENT OF DISPUTES (PARAGRAPH 16)
- SANCTIONS (PARAGRAPH 19)

III TRANSPARENCY OF THE INSTRUMENT (PARAGRAPH 20 TO 23):

- EX POST PUBLICITY
- STATISTICS
- CASES IN WHICH THE PURCHASING PROCEDURES PROVIDED FOR NEED NOT BE APPLIED.

IV TREATMENT OF DEVELOPING COUNTRIES (PARAGRAPH 24 TO 26)

THE ANNEX COMPLETES THIS LIST ON OTHER MORE SPECIFIC QUESTIONS RELATED TO ONE OR OTHER OF THESE HEADINGS. I. FIELD OF APPLICATION AND EQUILIBRIUM OF THE INSTRUMENT

5. APART FROM THE QUESTION OF THE EXCEPTIONS MENTIONED IN THE ANNEX, THE PARAMETERS OF THE FIELD OF APPLICATION OF THE INSTRUMENT ARE THE PURCHASING ENTITIES TO WHICH THE PROVISIONS WOULD BE APPLICABLE, THE LEVEL OF THE THRESHOLD (BELOW WHICH CERTAIN PROVISIONS OF THE LIMITED OFFICIAL USE LIMITED OFFICIAL USE

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INSTRUMENT OR THE WHOLE INSTRUMENT MIGHT NOT APPLY), AND THE POSSIBLE DEROGATIONS AND SAFEGUARD CLAUSE. THESE QUESTIONS, WHICH ARE ALSO INTERRELATED IN CERTAIN RESPECTS, DETERMINE THE INITIAL EQUILIBRIUM OF THE CONCESSIONS AND THE SUBSEQUENT MAINTENANCE OF THAT EQUILIBRIUM. WITH REGARD TO THIS LAST POINT ANOTHER QUESTION THAT MAY BE MENTIONED HERE, AS A REMINDER, IS THAT OF WITHDRAWAL (WHAT WOULD BE THE IMPLICATIONS FROM THE POINT OF VIEW OF RECIPROCITY OF THE WITHDRAWAL OF A SIGNATORY COUNTRY, PARTICULARLY ONE OF THE MAJOR PARTNERS).

6. AS REGARDS THE PURCHASING ENTITIES, THE PROBLEM IS THAT (FOR REASONS OF CONSTITUTIONAL, ADMINISTRATIVE

OR ECONOMIC ORGANISATION) THE IMPORTANCE AND THE NATURE OF THE ENTITIES COMING UNDER THE AUTHORITY OF GOVERNMENTS, AND IN RESPECT OF WHICH THE LATTER MAY ACCEPT THE OBLIGATIONS OF THE INSTRUMENT ON THE BASIS OF STRICT RECIPROCITY, VARY FROM ONE COUNTRY TO ANOTHER. THE SITUATION IS DIFFERENT, FOR EXAMPLE, AS REGARDS

MAJOR SECTORS OF ACTIVITY. (NOTE: IN THE COURSE OF THE ENQUIRY CARRIED OUT AT THE REQUEST OF THE TRADE COMMITTEE THE WORKING PARTY OBTAINED CERTAIN GLOBAL, QUANTITATIVE INFORMATION ON THE PURCHASING ENTITIES UNDER GOVERNMENT CONTROL AND THE CATEGORIES OF PRODUCTS PURCHASED, AS WELL AS QUALITATIVE INFORMATION ON THE MAIN ACTIVITIES IN THE PUBLIC SECTOR.) FOR ENTITIES IN THE PUBLIC SECTOR WHICH DO NOT COME DIRECTLY UNDER GOVERNMENT AUTHORITY AS "BEST ENDEAVOURS CLAUSE" AGREED BY GOVERNMENTS WOULD NOT NECESSARILY HAVE THE SAME PURPOSE IN ALL COUNTRIES.

7. UNDER ONE APPROACH, TO ENSURE THAT THERE IS SUFFICIENT RECIPROCITY AND COMMERCIAL INCENTIVE, THE FIELD OF APPLICATION OF THE INSTRUMENT SHOULD BE AS WIDE AS POSSIBLE: ALL THE ENTITIES UNDER GOVERNMENT CONTROL WOULD BE MADE DIRECTLY SUBJECT TO IT BY EACH COUNTRY, WHILE FOR THE OTHER ENTITIES IN THE PUBLIC SECTOR GOVERNMENTS WOULD SUBSCRIBE TO THE "BEST ENDEAVOURS" CLAUSE. UNDER THE OTHER APPROACH, AN ACCEPTABLE SOLUTION WOULD IMPLY ENVISAGING THE FIELD OF APPLICATION OF THE INSTRUMENT AT AN AVERAGE LEVEL (WHICH MIGHT BE THE LIMITED OFFICIAL USE LIMITED OFFICIAL USE

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STARTING POINT OF AN EVOLVING FORMULA). THIS LEVEL OF EQUILIBRIUM COULD BE DETERMINED IN THE LIGHT OF SEVERAL CRITERIA. CONCESSIONS WOULD PROBABLY IMPLY SOME FLEXIBILITY IN DEFINING FOR EACH COUNTRY WHICH PURCHASING ENTITIES SHOULD BE SUBJECT TO THE INSTRUMENT. AMONG THE QUESTIONS RAISED BY ONE OR THE OTHER APPROACH, AND WHICH AFFECT THE POSSIBILITY OF DEFINING EQUILIBRIUM WITHIN THE FRAMEWORK OF THE INSTRUMENT, ARE THE SCOPE OF A BEST ENDEAVOURS CLAUSE, ADOPTED BY GOVERNMENTS, IN THE DIFFERENT COUNTRIES, AND THE POSSIBILITY OF DIFFERENT TREATMENT OF COMPARABLE SECTORS OF ACTIVITY FROM ONE COUNTRY TO ANOTHER.

8. AS REGARDS THE THRESHOLD OF VALUE ABOVE WHICH INDIVIDUAL CONTRACTS WOULD FALL WITHIN THE SCOPE OF THE INTERNATIONAL OBLIGATIONS, THE FIRST QUESTION CONCERNS THE LEVEL AT WHICH IT WILL BE FIXED. SOME DELEGATES WOULD PLACE IT AS LOW AS POSSIBLE IN ORDER TO COVER ANY CONTRACT OF POTENTIAL IMPORTANCE FOR INTERNATIONAL COMPETITION. OTHER DELEGATES WOULD PREFER A HIGHER THRESHOLD IN ORDER TO AVOID THE ADMINISTRATIVE BURDEN THAT WOULD RESULT FROM THE APPLICATION OF STRICT PROCEDURES TO A LARGE NUMBER OF SMALL CONTRACTS, WITHOUT THERE NECESSARILY BEING ANY APPRECIABLE INCREASE IN TERMS OF THE PERCENTAGE SHARE IN VALUE OF THE CONTRACTS COVERED.(NOTE: IN THE COURSE OF ITS ENQUIRY THE WORKING PARTY COLLECTED SOME INFORMATION ON THE DISTRIBUTION OF CONTRACTS IN NUMBER AND IN VALUE, ALTHOUGH IT HAS NOT YET BEEN ESTABLISHED

WHETHER THIS INFORMATION IS ADEQUATE TO BACK UP CERTAIN CONCLUSIONS.)

9. THE SECOND PART OF THE QUESTION IS WHETHER THE WHOLE INSTRUMENT WOULD BE DETERMINED BY THE THRESHOLD, AS CERTAIN DELEGATES WOULD PREFER, FOR REASONS OF RECIPROCITY (UNLESS THE THRESHOLD IS SUFFICIENTLY LOW), OR WHETHER THERE WOULD BE A GENERAL UNDERTAKING WITH REGARD TO NON-DISCRIMINATION, THE THRESHOLD DETERMINING ONLY THE APPLICATION OF COMMON PROVISIONS FOR THE AWARD OF CONTRACTS. SEVERAL DELEGATES WOULD BE IN FAVOUR OF THIS SECOND APPROACH, IN SPITE OF THE PROBLEMS INVOLVED FOR CONTRACTS BELOW THE THRESHOLD. IN THE FIRST CASE GOVERNMENTS WOULD BE FREE IN THEIR LIMITED OFFICIAL USE  
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POLICIES AND PRACTICES IN RESPECT OF CONTRACTS BELOW THE THRESHOLD (AND WOULD NOT HAVE TO ASK FOR DEROGATIONS FOR THESE CONTRACTS). IF THE SECOND ALTERNATIVE, A COMMITMENT OF A GENERAL NATURE, WERE ADOPTED, THERE WOULD BE CLOSER PARALLELISM BETWEEN THE VARIOUS INTERNATIONAL UNDERTAKINGS WITH REGARD TO NON-DISCRIMINATION.

10. THE QUESTION WHETHER OR NOT THERE SHOULD BE DEROGATIONS (MAKING POSSIBLE THE NON-APPLICATION, IN PRINCIPLE ON A TEMPORARY BASIS, BY A GOVERNMENT OF THE OBLIGATIONS IMPOSED BY THE INSTRUMENT TO CONTRACTS COMING WITHIN ITS SCOPE) HAS LONG BEEN UNDER DISCUSSION IN THE WORKING PARTY (THE QUESTION AS REGARDS DEVELOPING MEMBER COUNTRIES IS DEALT WITH UNDER HEADING IV). THE WORKING PARTY WAS NOT ABLE TO AGREE ON PROVISIONS FOR DEROGATIONS WHICH, WHILE TAKING INTO ACCOUNT THE VARIOUS REASONS (REGIONAL DEVELOPMENT AID, SMALL AND MEDIUM-SIZED ENTERPRISES, EMPLOYMENT PROBLEMS, ETC.) FOR WHICH ONE OR OTHER OF THE GOVERNMENTS MAY CONSIDER IT NECESSARY TO RETAIN WITHIN CERTAIN LIMITS THE POSSIBILITY OF INTERVENING THROUGH GOVERNMENT PURCHASING, WOULD NOT GIVE RISE TO STRONG OBJECTIONS FROM OTHER SIDES, ON THE GROUNDS THAT OTHERS WOULD FOLLOW SUIT AND THAT THERE WOULD BE CONSTANT UNCERTAINTY AS TO THE DEGREE OF EFFECTIVE APPLICATION OF THE OBLIGATIONS. FOR THESE REASONS A NUMBER OF DELEGATES WERE FIRMLY OPPOSED TO DEROGATIONS; OTHERS ARGUED THAT IT WAS NECESSARY TO COVER THEIR COUNTRY'S PROBLEMS EFFECTIVELY; OTHER DELEGATES HAD NOT YET TAKEN A POSITION.

11. AT A RECENT MEETING OF THE WORKING PARTY SEVERAL DELEGATIONS PUT FORWARD A PROPOSAL THAT A SINGLE SAFEGUARD CLAUSE BE INCLUDED IN THE INSTRUMENT TO COVER SERIOUS, UNEXPECTED DIFFICULTIES. THE CLAUSE PROPOSED PROVIDES FOR STRICT LIMITS ON THE POSSIBLE USE OF SAFEGUARD MEASURES. SOME DELEGATES OPPOSED THIS PROPOSAL, REFERRING TO THE VARIOUS SAFEGUARDS ALREADY PRO-

VIDED FOR IN INTERNATIONAL UNDERTAKINGS, AND FEARING  
THAT SUCH A PROVISION MIGHT RUN COUNTER TO THE AIMS OF  
THE INSTRUMENT. A NUMBER OF OTHER DELEGATES WERE IN  
FAVOUR OF THE PROPOSAL. SOME OF THEM, HOWEVER, WON-  
DERED ABOUT THE POSSIBILITY OF PROVIDING FOR MORE  
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FLEXIBLE CONDITIONS FOR RESORT TO THE SAFEGUARD CLAUSE,  
WHILE RETAINING THE STRICT LIMITS ON ITS APPLICATION AND  
LIMITING MORE SEVERELY THE SCOPE OF POSSIBLE MEASURES.  
12. AS REGARDS THE PROBLEMS OF THE EXISTING ARRANGE-  
MENTS, SOME DELEGATES WHO HAD EARLIER REQUESTED DERO-  
GATIONS SUGGESTED ANOTHER SOLUTION. THEIR GOVERNMENTS  
CONSIDER IT IMPOSSIBLE TO CANCEL SUCH ARRANGEMENTS  
IMMEDIATELY. HOWEVER, SOME CHANGES IN THE LONGER TERM  
WERE NOT ENTIRELY EXCLUDED. THEY PROPOSED  
TO MAKE KNOWN, WHEN ADHERING TO THE INSTRUMENT, THE  
PRESENT TENOR AND SCOPE OF THE ARRANGEMENTS IN QUESTION,  
AND WOULD DROP ANY OTHER REQUEST. THIS NOTIFICATION  
MIGHT BE THE SUBJECT OF EXAMINATION AT THE INITIAL STAGE,  
AND THEN PERIODICALLY.

13. OTHER DELEGATES COULD NOT SUBSCRIBE TO AN IDENTICAL  
SOLUTION FOR THEIR PROBLEMS, INsofar AS THESE CONSI-  
STED, NOT IN THE NEED TO RETAIN PRESENT MEASURES, BUT IN  
THAT TO ENSURE A CERTAIN AD HOC FLEXIBILITY, IN CASES OF  
LIMITED IMPORTANCE, IN THE FUTURE APPLICATION OF THE  
INSTRUMENT. TWO POSSIBILITIES WERE MENTIONED: POSSIBLE  
SCOPE OF THRESHHOLD REFERRED TO IN PARAGRAPH 9; QUESTION  
OF AD HOC INVOCATION OF THE SAFEGUARD CLAUSE, REFERRED  
TO IN PARAGRAPH 11 ABOVE.

## II. MACHINERY FOR DISPUTE SETTLEMENT AT INTERNATIONAL LEVEL

14. ALTHOUGH IT IS ACCEPTED THAT EVERY EFFORT SHOULD BE  
MADE TO FACILITATE THE SETTLEMENT OF DIFFICULTIES AT THE  
LOWEST LEVEL (IN THE FIRST INSTANCE, WITHIN THE FRAME-  
WORK OF NATIONAL COMPLAINTS PROCEDURES AND THEN WITHIN  
THE FRAMEWORK OF BILATERAL CONSULTATIONS), THE MACHINERY  
FOR DISPUTE SETTLEMENT AT INTERNATIONAL LEVEL IS OF  
MAJOR IMPORTANCE FROM THE POINT OF VIEW OF THE ACCEPTAB-  
ILITY OF THE INSTRUMENT, ITS OPERATION AND, FINALLY,  
DURABLE PARTICIPATION BY THE SIGNATORY COUNTRIES. IN  
THE VIEW OF SOME, BECAUSE OF THE ASPECTS WHICH ARE BOUND UP  
IN PARTICULAR WITH THE NUMBER AND NATURE OF THE DISPUTES  
LIKELY TO ARISE, THE SPECIFIC CONCEPT OF THE DISPUTE  
SETTLEMENT PROCEDURE CANNOT BE WHOLLY DISSOCIATED  
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FROM THE QUESTION OF THE FRAMEWORK AND THE INSTITUTIONAL  
CONTEXT OF IMPLEMENTATION.

15. THE QUESTIONS IN THIS FIELD AROSE INITIALLY FROM  
TWO SETS OF FUNDAMENTAL CONSIDERATIONS: ON THE ONE HAND,  
THE EMPHASIS PLACED ON THE NEED TO TAKE ACCOUNT OF THE  
INTERESTS AND RESPONSIBILITIES OF GOVERNMENTS WITHIN THE  
FIELD COVERED BY THE INSTRUMENT, WHICH PROMPTED ALL  
DELEGATES TO RECOGNISE THE SOVEREIGNTY OF THE COMMITTEE  
OF REPRESENTATIVES OF SIGNATORY GOVERNMENTS IN THE  
MATTER OF DISPUTE SETTLEMENT; ON THE OTHER HAND, THE  
DESIDERATUM OF A MACHINERY WHICH WOULD BE ADAPTABLE TO  
THE VARIOUS PROBLEMS LIKELY TO ARISE, EQUITABLE, EFFEC-  
TIVE AND MORE OPERATIONAL THAN THE COMMITTEE, A DESIDER-  
ATUM TO WHICH THE WORKING PARTY ALSO LARGELY SUBSCRIBED.  
HOWEVER, APPROACHES WITH REGARD TO THIS MATTER ARE NOT  
YET UNIFIED. IT IS A QUESTION IN PARTICULAR OF THE  
CONCEPTION OF THE NATURE AND ROLE OF RESTRICTED BODIS  
IN DISPUTE SETTLEMENT.

16. CERTAIN DELEGATES STRESSED THAT A DISPUTE WHICH WAS  
NOT SPEEDILY SETTLED AT THE LEVEL OF GOVERNMENTS SHOULD  
BE ABLE TO BE SUBMITTED, AT THE REQUEST OF ANY PARTY  
CONCERNED, TO THE JUDGEMENT OF INDEPENDENT EXPERTS; THE  
BALANCED AND RESTRICTED BODY THAT WOULD MEET THOSE  
REQUIREMENTS WOULD HAVE THE TASK OF EXAMINING THE CASE  
AND DECIDING WHAT ACTION SHOULD BE TAKEN. THE COMMITTEE  
OF REPRESENTATIVES OF GOVERNMENTS WOULD RETAIN A RIGHT  
OF VETO OVER SUCH DECISIONS: IN THE VIEW OF THESE DELE-  
GATES, THIS APPROACH TAKES INTO ACCOUNT ALL THE CONSIDER-  
ATIONS SET OUT ABOVE IN PARAGRAPH 15.

17. OTHER DELEGATES, WHO FAVOUR A CONCEPTION ALIGNED  
MORE FUNDAMENTALLY ON THE CONSENSUS OF THE SIGNATORY  
GOVERNMENTS, HAVE PUT FORWARD AS A BASIS FOR A COMPROMISE  
A PROPOSAL FOR A TWO-CHANNEL SYSTEM: ON THE ONE HAND,  
THE POSSIBILITY FOR THE PARTIES, IF THEY SO AGREE, TO GO  
TO ARBITRATION; ON THE OTHER HAND, A PROCEDURE BASED  
ON A RESTRICTED BODY OF THE COMMITTEE OF SIGNATORY  
COUNTRIES, WHOSE ESSENTIAL FUNCTION WOULD BE TO PRESENT  
TO THE COMMITTEE RECOMMENDATIONS AS TO THE SOLUTIONS TO  
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BE APPLIED TO THE DISPUTES CONCERNED.

18. AMONG THE QUESTIONS RAISED CONCERNING SUCH A  
RESTRICTED BODY ENVISAGED AS A PERMANENT INSTITUTION,  
ARE THE NUMBER OF MEMBERS, REPRESENTATION OF THE VARIOUS  
SIGNATORY GOVERNMENTS, PROCEDURE FOR CONSULTATION OF

EXPERTS, THE EFFECTIVE WEIGHT OF THE BODY IN  
RELATION TO THE COMMITTEE, DECISION-MAKING PROCEDURES.  
SUBJECT OF ANSWERS BEING GIVEN TO THEIR PARTICULAR PRE-  
OCCUPATIONS, A LARGE NUMBER OF THE DELEGATES WOULD SEEM  
TO REGARD THIS PROPOSAL AS AN ACCEPTABLE BASIS OF WORK.  
OTHER DELEGATES HAVE RESERVED THEIR JUDGEMENT.

19. THE OTHER POINT OF DIFFERENCE IN THE CONTEXT OF  
DISPUTE SETTLEMENT CONCERNS THE QUESTION WHETHER PRO-  
VISION SHOULD BE MADE FOR THE POSSIBILITY OF SANCTIONS  
AGAINST COUNTRIES IN A SITUATION OF SERIOUS INFRINGEMENT.  
SOME DELEGATES CONSIDER THAT THIS IS AN ESSENTIAL ELEMENT  
OF AN EFFECTIVE MACHINERY FOR DISPUTE SETTLEMENT. THE  
GREATER NUMBER OF DELEGATES HAVE NOT SUBSCRIBED TO THESE  
VIEWS: A FIRM UNDERTAKING BY GOVERNMENTS TO OBSERVE AND  
ENFORCE THE RECOMMENDATIONS THAT WOULD BE ADDRESSED TO  
THEM SEEMS TO THESE DELEGATES TO BE OF SUFFICIENT WEIGHT  
IN THE ASSUMPTIONS THEY ADOPT CONCERNING THE COUNTRIES  
WHICH WOULD BE PARTIES TO SUCH AN INSTRUMENT.

### III. NECESSARY DEGREE OF TRANSPARENCY IN THE INSTRUMENT

20. THE PROVISIONS OF THE DRAFT INSTRUMENT RELATING TO  
PURCHASING PROCEDURES ARE AIMED AT ENSURING, MAINLY  
THROUGH EX ANTE PUBLICITY AND EXTENSIVE PROVISION OF  
INFORMATION TO SUPPLIERS, A SUFFICIENT DEGREE OF  
TRANSPARENCY IN CONTRACTS TO PERMIT WIDE AND EQUITABLE  
PARTICIPATION. AS HAS BEEN NOTED, THIS PRIOR PUBLICITY  
IS ENVISAGED ONLY FOR CONTRACTS ABOVE A CERTAIN THRESH-  
HOLD.

21. ONE OF THE MAJOR POINTS OF DIFFERENCE STILL REMAIN-  
ING WITH REGARD TO THE TRANSPARENCY OF THE DRAFT INSTRU-  
MENT CONCERNS THE EX POST PUBLICATION OF EACH CONTRACT,  
CONTAINING BRIEF ESSENTIAL INDICATIONS (AMOUNT OF  
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CONTRACT AWARDED, NATURE AND QUANTITY OF PRODUCTS, AND  
NAME OF THE SUCCESSFUL TENDERER). CERTAIN DELEGATES  
CONSIDER THAT THIS IS THE SOLE MEANS OF ENSURING  
SUFFICIENTLY EXTENSIVE PROVISION OF INFORMATION AND EASY  
SURVEILLANCE OF ALL ASPECTS OF THE INSTRUMENT. OTHER  
DELEGATES REMAINED OPPOSED TO SUCH A PROVISION, WHICH  
IN THEIR VIEW WOULD ENTAIL AN EXCESSIVE NUMBER OF  
DISPUTES; THIS IS IN ADDITION TO THE CONSIDERATION THAT  
THE DISCLOSURE OF AMOUNTS OF CONTRACTS CONSTITUTES A  
DANGER FOR SUBSEQUENT COMPETITION.

22. THE QUESTION OF REGULAR STATISTICS, WHICH COULD DO  
BOTH SUPPLEMENT THE PROVISION OF GENERAL INFORMATION AND  
FACILITATE SURVEILLANCE OF THE INSTRUMENT, AND , IN



PARTICULAR, THE SETTLEMENT OF DISPUTES BETWEEN GOVERNMENTS, HAS BEEN BROUGHT UNDER STUDY BY THE WORKING PARTY. THE DEGREE OF DETAIL AND THE NATURE OF THE INFORMATION NECESSARY WOULD BE BOUND UP, IN THE EYES OF CERTAIN DELEGATIONS, WITH THE QUESTION OF EX POST PUBLICATION.

23. ANOTHER IMPORTANT POINT OF DIVERGENCE, WHICH RELATES BOTH TO TRANSPARENCY AND TO RECIPROCITY IN THE APPLICATION OF THE INSTRUMENT, STILL REMAINS WITH REGARD TO THE LIST DEFINING THE CASES IN WHICH PURCHASING ENTITIES WOULD NOT NEED TO APPLY THE OPEN OR SELECTIVE PROCEDURES AS LAID DOWN, AND COULD USE PROCEDURES WHICH DID NOT PRESENT THE SAME FORMAL GUARANTEES FROM THE STANDPOINT OF COMPETITION AND MIGHT INVOLVE PURCHASING THROUGH DIRECT DEALING WITH A SUPPLIER; SOME DELEGATES REGARD AS UNACCEPTABLE THE RETENTION BY OTHER DELEGATES IN THIS LIST OF CASES WHICH DO NOT IN THEIR VIEW REPRESENT OBJECTIVE INSTANCES OF INABILITY TO FOLLOW THE NORMAL RULES AND WHICH MAY COVER DE FACTO DEROGATIONS FROM THE PRINCIPLE OF NON-DISCRIMINATION.

#### IV. TREATMENT OF DEVELOPING COUNTRIES

24. THE DELEGATES FROM THE DEVELOPING MEMBER COUNTRIES HAVE MAINTAINED THE POSITION THAT FOR REASONS OF EQUILIBRIUM, AND HAVING REGARD TO THE PARTICULAR SITUATION OF THEIR COUNTRIES, A GENERAL DEROGATION CLAUSE SHOULD LIMITED OFFICIAL USE  
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BE PROVIDED FOR THEIR BENEFIT; THIS CLAUSE WOULD NOT BE INCOMPATIBLE, IN PRACTICE, WITH THE POSSIBILITY OF THESE COUNTRIES APPLYING CERTAIN PROVISIONS OF THE INSTRUMENT, MOVING PROGRESSIVELY FORWARD UNTIL THEY ACHIEVED FULL APPLICATION.

25. THE PRINCIPLE OF APPROPRIATE TREATMENT UNDER THE INSTRUMENT OF DEVELOPING COUNTRIES IS RECOGNISED BY THE WORKING PARTY. ONE OF THE QUESTIONS POSED IN THIS REGARD IS WHETHER, AND ON WHAT TERMS, THE DEVELOPING COUNTRIES UNABLE TO APPLY ALL, OR SOME, OF THE OBLIGATIONS COULD ACCEDE TO THE INSTRUMENT. NON-ACCESSION BY DEVELOPING COUNTRIES WOULD NOT PREVENT THEIR BEING GRANTED BY THE SIGNATORY COUNTRIES ADVANTAGES IN THE FIELD COVERED BY THE INSTRUMENT (THE DISCUSSION ON THE QUESTION OF NON-DISCRIMINATION HAVING SHOWN THAT THE SIGNATORY COUNTRIES WOULD RETAIN THE POSSIBILITY TO GRANT ADVANTAGES IDENTICAL TO THOSE UNDER THE INSTRUMENT, IN PARTICULAR TO DEVELOPING COUNTRIES).

26. CERTAIN DELEGATES REGARDED FURTHER CONSIDERATION OF THIS QUESTION AS PREMATURE WHEN THE AMIN PARAMETERS OF

THE INSTRUMENT HAD NOT YET BEEN FIXED. OTHER DELEGATES CONSIDER IT DESIRABLE AND TIMELY. A CONTRIBUTION COULD BE MADE TO THE OVERALL THINGING OF THE TRADE COMMITTEE ON DIFFERENTIAL TREATMENT OF DEVELOPING COUNTRIES.

#### ANNEX

#### OTHER QUESTIONS OUTSTANDING

##### 1. EXCEPTIONS

WITH A VIEW TO ENABLING CONCESSIONS TO BE FIXED AT AN ACCEPTABLE AND SUFFICIENT LEVEL, THE QUESTION HAS BEEN RAISED OF INCLUDING NON-MILITARY PURCHASES BY DEFENSE MINISTRIES IN THE SCOPE OF THE INSTRUMENT. VIEWS DIFFER HOWEVER AS TO THE NECESSITY AND POSSIBILITY OF ESTABLISHING A COMMON DEFINITION (POSSIBLY ON THE BASIS OF POSITIVE LISTS OF EQUIPMENT).

THE QUESTION WHETHER IT IS JUSTIFIABLE TO PRO-LIMITED OFFICIAL USE  
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VIDE FOR CERTAIN OTHER EXCEPTIONS TO THE INSTRUMENT (PURCHASING FOR THE ACCOUNT OF AN INTERNATIONAL ORGANIZATION IN ACCORDANCE WITH ITS OWN RULES, OR FOR THE ACCOUNT OF A NON-SIGNATORY GOVERNMENT) HAS NOT YET BEEN RESOLVED.

##### 2. COMPENSATORY PURCHASES AND OTHER CONDITIONS ATTACHED TO THE AWARD OF CONTRACTS

IT HAS NOT BEEN POSSIBLE TO AGREE ON A PROVISION FOR PROHIBITING THE IMPOSITION OF SUPPLIERS OF REQUIREMENTS AS TO COMPENSATORY PURCHASES OR GRANTING OF LICENSES AS A CONDITION OF THE AWARD OF CONTRACTS.

##### 3. NON-DISCRIMINATION

THE DISAGREEMENTS REMAIN: ON THE ONE HAND, ON THE NEED, FROM THE STANDPOINT OF RECIPROCITY AND EQUITABLE TREATMENT OF PRODUCTS AND SUPPLIERS OF THE SIGNATORY COUNTRIES, TO ADOPT A SPECIFIC RULE OF ORIGIN FOR THE INSTRUMENT ON GOVERNMENT PURCHASING AND, ON THE OTHER HAND, ON THE LEGITIMACY, FROM THE STANDPOINT OF INTERNATIONAL COMMITMENTS AND THE INSTRUMENT, OF FUTURE EXTENSION OF GOVERNMENT PURCHASING ADVANTAGES WITHIN FREE TRADE AREAS AND CUSTOMS UNIONS, WHICH WOULD REMAIN LIMITED TO THE COUNTRIES BELONGING TO THEM.

##### 4. FINAL PROVISIONS

THE WORKING PARTY HAS HAD ONLY A PRELIMINARY

EXCHANGE OF VIEWS ON THE QUESTIONS OF ENTRY INTO  
FORCE, ACCESSION TERMS, AND WITHDRAWAL TERMS. ONE  
QUESTION JUDGED BY SOME TO BE ESSENTIAL IS THAT OF  
PARTICIPATION AND OF WITHDRAWAL OF KEY  
COUNTRIES.

5. PROCEDURES FOR OPENING TENDERS

ONE DIVERGENCE STILL REMAINS REGARDING A  
PROVISION FOR GUARANTEEING, IN OPEN PROCEDURES, THE  
PUBLIC OPENING OF TENDERS AND THE DISCLOSURE OF THEIR  
AMOUNT. END TEXT  
LIMITED OFFICIAL USE  
LIMITED OFFICIAL USE

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KATZ  
UNQUOTE  
KISSINGER

LIMITED OFFICIAL USE

<< END OF DOCUMENT >>

## Message Attributes

**Automatic Decaptioning:** X  
**Capture Date:** 15 SEP 1999  
**Channel Indicators:** n/a  
**Current Classification:** UNCLASSIFIED  
**Concepts:** REPORTS, TRADE DISCRIMINATION, GOVERNMENT PROCUREMENT, COMMITTEES  
**Control Number:** n/a  
**Copy:** SINGLE  
**Draft Date:** 09 JAN 1976  
**Decaption Date:** 01 JAN 1960  
**Decaption Note:**  
**Disposition Action:** RELEASED  
**Disposition Approved on Date:**  
**Disposition Authority:** morefirh  
**Disposition Case Number:** n/a  
**Disposition Comment:** 25 YEAR REVIEW  
**Disposition Date:** 28 MAY 2004  
**Disposition Event:**  
**Disposition History:** n/a  
**Disposition Reason:**  
**Disposition Remarks:**  
**Document Number:** 1976STATE005848  
**Document Source:** ADS  
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**Enclosure:** n/a  
**Executive Order:** N/A  
**Errors:** n/a  
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**Previous Channel Indicators:**  
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**Reference:** n/a  
**Review Action:** RELEASED, APPROVED  
**Review Authority:** morefirh  
**Review Comment:** n/a  
**Review Content Flags:**  
**Review Date:** 19 APR 2004  
**Review Event:**  
**Review Exemptions:** n/a  
**Review History:** RELEASED <19 APR 2004 by SmithRJ>; APPROVED <20 APR 2004 by morefirh>  
**Review Markings:**

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EO Systematic Review  
04 MAY 2006

**Review Media Identifier:**  
**Review Referrals:** n/a  
**Review Release Date:** n/a  
**Review Release Event:** n/a  
**Review Transfer Date:**  
**Review Withdrawn Fields:** n/a  
**Secure:** OPEN  
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**TAGS:** ETRD, OECD  
**To:** MTN GENEVA  
**Type:** TE  
**Markings:** Margaret P. Grafeld Declassified/Released US Department of State EO Systematic Review 04 MAY 2006